

1 CIVIL DISTRICT COURT
2 PARISH OF ORLEANS
3 STATE OF LOUISIANA
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7 GLORIA SCOTT AND *
8 DEANIA JACKSON, *
9 * NO. 96-8461
10 VERSUS * DIVISION "I"
11 * SECTION 14
12 THE AMERICAN TOBACCO *
13 COMPANY, INC., ET AL. *

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17 Transcript of proceedings before the
18 Honorable Richard J. Ganucheau, Judge Pro Tempore,
19 Civil District Court, Parish of Orleans, State of
20 Louisiana, 421 Loyola Avenue, New Orleans, Louisiana
21 70112, commencing on June 18, 2001.

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Wednesday Morning Session

April 2, 2003

10:30 a.m.

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	I N D E X	
1 Witness		Page
2		
3 DORIS E. LeBLANC, M.D.		
4 Cross-continued (By Mr. Wittmann)	17767	
5 Redirect (By Mr. Cates)	17801	
6		
7		
8		
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1 Wednesday Morning Session

2 April 2, 2003

3 10:30 a.m.

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5 P R O C E E D I N G S

6 * * * * *

7 (In open court with a jury present:)

8 THE COURT:

9 Good morning. Please be seated.

10 Doctor, you are still under oath. Do
11 you understand that?

12 THE WITNESS:

13 Yes, sir.

14 THE COURT:

15 Mr. Wittmann, are you ready to
16 continue with your cross-examination?

17 MR. WITTMANN:

18 Yes, I am, Your Honor.

19 THE COURT:

20 Proceed.

21 MR. WITTMANN:

22 Good morning to you, good morning
23 ladies and gentlemen of the jury.

24 -- -- --

25 DORIS E. LeBLANC, M.D.

26 being previously duly sworn by the Clerk, testifies
27 and says further as follows:

28 -- -- --

29 CROSS-EXAMINATION (Continued)

30 BY MR. WITTMANN:

31 Q. Good morning, Dr. LeBlanc?

32 A. Good morning.

17768

1 Q. Dr. LeBlanc, you told us yesterday that you
2 disagreed with a number of statements that were in
3 DSM IV that I went over with you. Do you recall
4 that?

5 A. Yes, sir.

6 Q. And DSM IV is the fourth edition of the
7 Diagnostic and Statistical Manual of Mental
8 Disorders, is it not?

9 A. Yes.

10 Q. And it's published by the American
11 Psychiatric Association?

12 A. Yes.

13 Q. And that's an organization you used to belong
14 to?

15 A. Yes.

16 Q. And the manual is compiled, is it not, by a
17 task force composed of the top psychiatric experts
18 in the United States?

19 A. Yes.
20 Q. And it certainly is a peer-reviewed
21 publication, isn't it?
22 A. Yes.
23 Q. And it's constantly being revised to keep it
24 up-to-date?
25 A. Yes.
26 Q. And in fact, the most recent transcript
27 revision was about the year 2000, was it not?
28 A. It was published in 2000.
29 Q. Okay. And the article I showed you yesterday
30 from the Archives of General Psychiatry, which was
31 Exhibit SA-4688, it was published in the year 2001
32 by the American Medical Association?

17769

1 A. The article you showed me, yes.
2 Q. And you would agree, wouldn't you, that
3 that's one of the most authoritative journals in the
4 field of psychiatry?
5 A. The DSM III?
6 Q. No, the article I showed you. The exhibit
7 yesterday was published in the Archives of
8 General --
9 A. It was in reference to DSM III. So are you
10 asking me about that or are you asking me about the
11 publication in which the article appeared?
12 Q. The publication, the Archives of General
13 Psychiatry?
14 A. Yes.
15 Q. Okay. And you would agree that is one of the
16 most authoritative journals in the field of
17 psychiatry?
18 A. Yes.
19 Q. Now, you have practiced psychiatry in the
20 New Orleans area since the 1980s, and in all those
21 years you have never heard prior to this case that
22 the Ochsner Clinic had a formal smoking cessation
23 clinic?
24 A. Back in the '80s, I had not heard of that.
25 Q. Okay. Now, the class representatives,
26 Ms. Scott and Ms. Jackson, saw doctors at Ochsner,
27 didn't they?
28 A. As far as I am aware of, yes.
29 Q. They saw a Dr. Hickman?
30 A. Yes, as far as I am aware.
31 Q. Dr. Hudzinski?
32 A. Yes, as far as I'm aware.

17770

1 Q. And a Dr. Baker?
2 A. A Dr. Baker?
3 Q. Uh-huh.
4 A. I'm not familiar with his name.
5 Q. You didn't refer either Ms. Scott or
6 Ms. Jackson to any doctor at Ochsner Clinic, did
7 you?

8 THE WITNESS:

9 Just a point of clarification, I can
10 discuss the individual representatives?

11 THE COURT:

12 Answer the question unless there is
13 an objection or unless I stop you.

14 THE WITNESS:

15 All right.

16 A. Would you repeat your question?
17 Q. Sure. You didn't refer Ms. Scott or
18 Ms. Jackson to any physician at the Ochsner Clinic,
19 did you?
20 A. I recommended cessation and medical
21 monitoring, but I did not refer them to a specific
22 doctor at Ochsner.
23 Q. Dr. LeBlanc, the patients that you see are
24 basically drug abusers, are they not?
25 A. The patients I treat have addictions.
26 Q. My question was they are basically drug
27 abusers?
28 A. If you are using the term drug abuse
29 interchangeably with addiction, then yes, I treat
30 people that have abuse or problems with drug abuse
31 who are addicted.
32 Q. And you have never treated any patient
17771
1 exclusively for smoking cessation, have you?
2 A. Not exclusively, that's correct.
3 Q. Okay. Now, nicotine withdrawal is not
4 something that lasts forever, is it, Doctor?
5 A. The actual withdrawal itself, you are
6 correct, it does not last forever.
7 Q. And once a smoker quits smoking, isn't all
8 the nicotine pretty much out of their system in
9 twenty-four to forty-eight hours?
10 A. Yes. The withdrawal, however, can last up to
11 a year.
12 Q. All right. A year?
13 A. Yes, sir.
14 Q. Doctor, do you still have before you the
15 depositions I handed you yesterday, the transcripts
16 of your deposition?
17 A. Yes.
18 Q. Haven't you testified previously that
19 withdrawal lasts just three to four weeks?
20 A. Certain aspects of the withdrawal lasts for
21 two to three weeks. Certain aspects of the
22 withdrawal will last for a year or longer.
23 Q. Would you refer, please, to your deposition
24 of November 3, 2000, at page 170? And at line 21 --
25 do you have that page, Doctor?
26 A. Yes.
27 Q. I asked you this question: I know that it
28 takes anywhere from twenty-four to forty-eight
29 hours -- I'm sorry, this is your answer. Let me go
30 back and start again.
31 Starting with line 16:
32 Do you have an opinion, Doctor,
17772
1 as to how long a smoker would have to quit
2 in order to make an attempt to quit
3 smoking? How long would he have to go
4 without cigarettes to be a valid attempt
5 in your opinion?
6 Answer: I know that it takes
7 anywhere from twenty-four to forty-eight
8 hours for nicotine to get out of your
9 system, and the withdrawal lasts sometimes
10 weeks. So I would imagine if they -- if
11 the person is able to get through the
12 first few weeks, then that would be good.

13 Do you recall me asking you those questions
14 and you giving that answer?
15 A. Yes.
16 Q. Now, we also talked yesterday briefly,
17 Doctor, about the lifetime prevalence of nicotine
18 withdrawal among persons who smoke, the prevalence
19 being about 50 percent. I showed that you in
20 DSM IV; correct?
21 A. You showed me that on the screen, yes.
22 Q. So since DSM IV says that half of the smokers
23 would meet the criteria for nicotine withdrawal,
24 that would necessarily mean that half would not meet
25 the criteria for nicotine withdrawal; correct?
26 A. According to DSM IV.
27 Q. And DSM IV also states, doesn't it, Doctor,
28 that people who quit on their own experience less
29 nicotine withdrawal than those in treatment programs?
30 A. If that's what -- if that's what you have
31 read out of DSM IV, then, yes.
32 Q. Well, at page 246 of DSM IV, it -- and I will

17773

1 read this statement to you:

2 Prospectively it's estimated that
3 about 50 percent of those who quit smoking
4 on their own and about 75 percent of those
5 in treatment programs experience nicotine
6 withdrawal when they stop smoking.

7 So that says, does it not, that people in
8 cessation programs have greater withdrawal problems
9 than people who quit on their own, does it not?

10 A. If that's your interpretation of DSM IV,
11 then, yes.

12 Q. Well, that's what I just read to you.

13 A. If that's what you read in DSM IV, that's
14 what's in DSM IV, yes.

15 Q. Now, Dr. LeBlanc, do you know of any
16 psychological tests which validate a diagnosis of
17 nicotine dependence?

18 A. Psychological tests are really out of the
19 realm of psychiatry. That would require a referral
20 to a psychologist.

21 Q. I just asked you if you knew of any
22 psychological tests that validate a diagnosis of
23 nicotine dependence.

24 A. Once again, that would be under the auspices
25 of a psychologist.

26 But as a general clinical psychiatrist, I am
27 not aware of any specific tests that I could order
28 or that I have ordered for the class members that I
29 have treated to undergo to make a diagnosis.

30 Q. Okay. So at the end of the day, then, all of
31 this, the diagnosis of nicotine dependence with
32 associated nicotine withdrawal, that's a

17774

1 professional judgment based on each individual
2 smoker, is it not?

3 A. That is not correct.

4 Q. You disagree with that?

5 A. Yes, sir.

6 Q. Okay. Well, Dr. LeBlanc, let me ask you
7 this. Just because a smoker experiences nicotine
8 withdrawal doesn't mean that the smoker can't quit
9 smoking, does it?

10 A. I'm not sure I understand your question.
11 Q. Nicotine withdrawal -- let me rephrase it and
12 ask it another way.
13 Nicotine withdrawal doesn't make it
14 impossible for a smoker to quit smoking, does it?
15 A. Nicotine --
16 Q. The fact that a smoker experiences nicotine
17 withdrawal doesn't make it impossible for him or her
18 to quit, does it?
19 A. I really don't see the associations. I don't
20 understand your question.
21 Q. Okay. Would you agree, Doctor, that
22 motivation is the key to quitting smoking?
23 A. That is important in the process of cessation.
24 Q. Is it the key?
25 A. I wouldn't say it's the key.
26 Q. Well, let me refer you to your deposition
27 again of November 3rd, 2000.
28 A. Okay.
29 Q. And if you would turn, please, to page 179.
30 At line 18 I ask you this question:
31 Does every smoker who quits
32 experience impairment in their social or
33 17775
1 occupational or other important areas of
2 functioning?
3 Answer: You once again -- you
4 have to take in consideration -- key --
5 motivation to quit. Has a person cessated
6 based on a personal decision that I want
7 to quit? That's very important.
8 Do you recall me having asked that question
9 and giving that answer?
10 A. Yes.
11 Q. Okay. In other words, a smoker who is
12 motivated to quit can do so regardless of whether
13 they experience nicotine withdrawal; correct,
14 Doctor?
15 A. I don't agree with -- I don't understand that
16 question and the association that you are making in
17 that question.
18 Q. Let me ask you something that you will
19 understand. Scientific literature confirms, doesn't
20 it, Doctor, that the most successful quitters quit
21 cold turkey?
22 A. That's not the current belief. No, sir, I
23 don't agree with that.
24 MR. WITTMANN:
25 Ted, would you publish Exhibit
26 AKS-001288?
27 BY MR. WITTMANN:
28 Q. You have seen this article before, Doctor?
29 A. I don't remember it offhand, but I'm going to
30 read it as you put it up on the screen.
31 THE COURT:
32 Don't read it yet. Answer the
33 17776
1 question, if you are able to.
2 A. No, I don't recognize it at this point.
3 Q. You do recognize it as a publication of the
4 Journal of the American Medical Association?
5 A. I see that, yes.
6 Q. Okay. And we have established this several

7 times during the course of this trial: That's a
8 peer-reviewed publication, the JAMA articles?

9 A. Yes.

10 MR. WITTMANN:

11 Your Honor, I would offer Exhibit
12 AKS-001288 in evidence at this time.

13 MR. CATES:

14 I think it's already in, Judge.

15 THE COURT:

16 With no objection, it will be
17 received.

18 MR. WITTMANN:

19 May I publish the first page for the
20 jury, Your Honor?

21 THE COURT:

22 You may publish.

23 MR. WITTMANN:

24 And I think the jury can see it.

25 BY MR. WITTMANN:

26 Q. The article is titled Methods Used to Quit
27 Smoking in the United States; correct?

28 A. Is that a question for me?

29 Q. Yes. That's the title?

30 A. That's the title of the article, yes.

31 Q. All right. And a number of people

32 contributed to that, including a Dr. Michael Fiore?

17777

1 A. Yes.

2 Q. Okay. And Dr. Michael Fiore is an expert on
3 the subject of smoking cessation, isn't he, Doctor?

4 A. Yes. I have seen his name associated with
5 that.

6 Q. In fact, he wrote the clinical guidelines for
7 the federal government to the Health and Human
8 Services Department on smoking cessation programs,
9 did he not?

10 A. I don't know that specifically.

11 Q. All right.

12 MR. WITTMANN:

13 Ted, could you highlight the first
14 paragraph under the names of the doctor.

15 That's it, that whole paragraph.

16 BY MR. WITTMANN:

17 Q. Now, you will see, Doctor, right off the bat,
18 Dr. Fiore said that about 90 percent of successful
19 quitters and 80 percent of unsuccessful quitters
20 used individual methods of smoking cessation rather
21 than organized programs; correct?

22 A. Yes. Based on his data from 1986, yes.

23 Q. And he says most of these smokers who quit on
24 their own used a cold turkey approach?

25 A. Yes. Based on his data from 1986.

26 Q. And all this data was drawn from the adult
27 use of tobacco survey conducted by the government,
28 was it not?

29 A. In 1986.

30 Q. Okay. And do you see the conclusion in that
31 paragraph, they say:

32 Among smokers who had attempted

17778

1 cessation within the previous ten years,
2 47.5 percent of persons who tried to quit
3 on their own were successful, whereas only

4 23.6 percent of persons who used cessation
5 programs succeeded.

6 We conclude that cessation
7 programs serve a small, but important,
8 population of smokers that includes
9 heavier smokers, those most at risk for
10 tobacco-related morbidity and mortality.

11 So that tells us, does it not, Doctor, that
12 over a ten-year period, half of the people who tried
13 to quit on their own were successful based on
14 government data, almost half?

15 A. I don't agree that that would be the
16 interpretation. But back in 1986, it says:

17 We conclude that cessation
18 programs serve a small, but important,
19 population of smokers that includes
20 heavier smokers, those most at risk for
21 tobacco-related morbidity and mortality.

22 Q. I understand that. Doctor, that's why I
23 showed the whole thing.

24 But it concludes, does it not, that 47 and a
25 half percent of persons who tried to quit on their
26 own were successful, whereas only 23.6 percent of
27 those who used cessation programs succeeded? That's
28 their conclusion, isn't it?

29 A. Yes.

30 And to qualify my answer, it says among
31 smokers who had attempted cessation within the
32 previous ten years from data from 1986.

17779

1 Q. Okay, fair enough. But this was based on
2 government data, was it not?

3 A. From 1986.

4 Q. Yeah. So the relief that the plaintiffs are
5 suing for in this case, Doctor, smoking cessation,
6 according to this study by Dr. Fiore, that relief of
7 smoking cessation is less effective than the simple
8 decision to quit on your own?

9 A. I don't know. I don't agree with the
10 conclusion they are drawing. But the data once
11 again is from 1986.

12 Q. Okay. And that data shows that smoking
13 cessation programs are only one half as effective --

14 MR. CATES:

15 Objection, Your Honor. It's
16 repetitious.

17 THE COURT:

18 It is repetitious, Mr. Wittmann. Go
19 on to something else, please.

20 BY MR. WITTMANN:

21 Q. Again, Doctor, motivation is actually the key
22 to quitting smoking, is it not?

23 MR. CATES:

24 Objection.

25 THE COURT:

26 That's repetitious also,
27 Mr. Wittmann. Go on to something else,
28 please.

29 MR. WITTMANN:

30 Yes, Your Honor.

31 BY MR. WITTMANN:

32 Q. Dr. LeBlanc, nicotine withdrawal doesn't

17780

1 prevent abstinence, does it?
2 A. I'm unsure of the association you are drawing
3 once again.
4 Q. The fact that a person experiences withdrawal
5 symptoms, nicotine withdrawal symptoms, doesn't
6 prevent a smoker from keeping not smoking, not
7 taking up smoking again?
8 A. I don't appreciate the association.
9 My qualification to that response is
10 withdrawal is part of the addiction itself. But I'm
11 not understanding the association that you are
12 drawing.
13 Q. Well, Doctor, aren't there formal studies
14 that have concluded that nicotine withdrawal has
15 very little effect on abstinence?
16 A. The effect and -- I don't think I can answer
17 that yes or no.
18 The effect that nicotine withdrawal has on
19 someone is to oftentimes lead them back to the use
20 of the drug.

21 MR. WITTMANN:
22 Ted, could you call up for the Court
23 and counsel Exhibit AZ-002400?

24 BY MR. WITTMANN:
25 Q. And Doctor, you recognize this as an article
26 by Dr. John Hughes in the Journal of Consulting
27 Psychology?

28 A. Yes.
29 Q. And it's a peer-reviewed article?

30 A. Yes.
31 Q. And Dr. Hughes is considered to be an expert
32 in smoking cessation?

17781

1 A. Yes.
2 MR. WITTMANN:
3 Your Honor, I offer in evidence
4 Exhibit AZ-002400.

5 MR. CATES:
6 It's already admitted, Your Honor.
7 No objection.

8 THE COURT:
9 Without objection, it will be
10 received.

11 MR. WITTMANN:
12 Could you turn to the cover page and
13 publish it to the jury, the title, please?

14 THE COURT:
15 You may publish it.

16 MR. WITTMANN:
17 And blow that up so everyone can see
18 it, please, Ted?

19 BY MR. WITTMANN:
20 Q. This article deals with Tobacco Withdrawal in
21 Self-Quitters; correct, Doctor?

22 A. Yes.
23 Q. Okay.

24 MR. WITTMANN:
25 Would you turn to page 696, please,
26 and then highlight and blow up the last
27 summary paragraph.

28 BY MR. WITTMANN:
29 Q. Dr. Hughes concludes in his conclusion of
30 this article, and I will read it:

31 Nicotine replacement is believed
32 to work by reducing withdrawal. Yet

17782

1 withdrawal appears to have little effect
2 on abstinence. Thus how does nicotine
3 replacement increase abstinence?

4 So the conclusion is nicotine withdrawal has

5 little effect on not starting smoking again; is that
6 correct?

7 A. That's Fagerstrom in 1988. If that's what's
8 written in that article.

9 Q. Doctor, isn't the fact that a motivated
10 person can quit smoking at any time they decide to
11 is supported by the Surgeon General's finding on
12 trends in quitting smoking?

13 A. In reference to which Surgeon General report
14 are you referring?

15 Q. I'm referring to the Surgeon General's report
16 in 1990.

17 A. 1990?

18 MR. WITTMANN:

19 Put up Exhibit 906, please, Ted.

20 BY MR. WITTMANN:

21 Q. You are familiar with the Surgeon General's
22 reports, are you not, Doctor?

23 A. Yes.

24 MR. WITTMANN:

25 Okay. And I believe all of these are
26 in evidence, Your Honor. May I publish
27 the first page?

28 THE COURT:

29 You may publish it.

30 BY MR. WITTMANN:

31 Q. This is the Report of the Surgeon General in
32 1990 on the Health Benefits of Smoking Cessation;

17783

1 correct?

2 A. Yes.

3 MR. WITTMANN:

4 And would you turn, please, to page
5 590?

6 And that chart -- blow up the lower
7 line of that chart, please, Ted, so it
8 shows the years and we can all see it.

9 No, on the graph itself, the years
10 across the bottom. Go up a little bit so
11 we can see it.

12 Start with the left-hand side and
13 blow up that whole last part up. Okay.

14 BY MR. WITTMANN:

15 Q. So this is from the year 1964 all the way
16 through 19 -- up to 1990, really, is it not?

17 A. I don't see where it's up to 1990, sir.

18 Q. Do you see it goes '79, '84, it's in
19 increments of a year for each bar?

20 A. But down at the bottom it says source ends at
21 1987, unpublished data.

22 Q. Okay. But this reflects, does it not, that
23 there is a trend in increasing smoking over this
24 period of time going up from about 30 percent in
25 males up to close to 50 percent? That's what that
26 chart shows?

27 A. I don't have the expertise to interpret that

28 chart.
29 Q. You don't?
30 A. No, sir.
31 Q. The chart is titled Trends in the Quit Ratio,
32 United States, 1965 to 1987, By Gender?

17784

1 A. That's correct.
2 Q. And you can't interpret that?
3 A. The answer is no. And I would like to
4 qualify that.

5 That's data that is from 1969 to before 1987,
6 which means there is almost 15 to 17 years of new
7 data that I have processed.

8 That makes it difficult for me to go back in
9 time and understand what was the intent of that
10 graph, taking just that graph, with the knowledge
11 that I have at this point.

12 Q. You don't dispute, do you, Doctor, that the
13 ratios of quitting smoking have continued to go up
14 since 1989?

15 A. I have to disagree with that based on the
16 knowledge that I have at this point.

17 Q. In fact, the statistics show today that there
18 are over 50 million former smokers in the United
19 States?

20 A. I have not seen that statistic, sir.

21 MR. WITTMANN:

22 Ted, could you post Exhibit AZS-0002,
23 which is the 1988 Health Consequences of
24 Smoking?

25 MR. TED MILLER:

26 No. Do you mean 904?

27 MR. WITTMANN:

28 Yes, I'm sorry. I gave you the wrong
29 number.

30 And specifically page 466.

31 May I publish, Your Honor?

32 THE COURT:

17785

1 You may publish.

2 MR. WITTMANN:

3 And would you highlight the first two
4 sentences in the last paragraph?

5 BY MR. WITTMANN:

6 Q. Doctor, this is from a 1988 report. It
7 says:

8 According to the 1985 National
9 Health Interview Survey, there are
10 approximately 41 million former smokers in
11 the United States.

12 That was as of 1985.

13 Now, as of 2003, that number is over 50
14 million, is it not?

15 A. I don't know that. As I have said earlier, I
16 have not seen that statistic of 50 million former
17 smokers.

18 Q. So your testimony is you are unable to tell
19 this jury how many former smokers there are in the
20 United States today?

21 A. That's correct. And may I qualify that?

22 Q. If you need to, Doctor.

23 A. I do need to.

24 When you say former smoker, you have to

25 understand that that's not at one point in time.
26 We know the nature of nicotine addiction is
27 that relapses occur. And so when you look at a
28 former smoker, you have to define are you talking
29 about someone at that point who is no longer smoking
30 but certainly is at risk for experiencing relapses
31 and then becoming a smoker, an active smoker again,
32 or when you say former smoker are you talking about

17786

1 someone that is a year after cessation, five years
2 after cessation, ten years after cessation.

3 So there is a lot more information that I
4 would have to have in order to make a yes or no
5 answer to that question.

6 Q. Doctor, I'm talking about 50 million people
7 who have quit smoking and are not smoking today.

8 A. I have not seen that statistic.

9 Q. You just don't know; is that correct?

10 A. I have not seen that statistic, Your Honor.

11 MR. CATES:

12 Objection, Your Honor. He's being
13 repetitious.

14 MR. WITTMANN:

15 I will move on.

16 THE COURT:

17 I'm sorry, Mr. Cates, I didn't hear
18 what you said.

19 MR. CATES:

20 I said he's being repetitious and
21 it's been asked and answered.

22 THE COURT:

23 Overruled. Next question please,
24 Mr. Wittmann.

25 BY MR. WITTMANN:

26 Q. This article continues or this report goes on
27 to say that approximately 90 percent of former
28 smokers report that they quit smoking without formal
29 treatment programs or smoking cessation devices,
30 citing again Dr. Fiore; correct?

31 A. That's what's in that article, yes.

32 Q. And you know that's correct, don't you,

17787

1 Doctor?

2 A. Sir, the answer to that is no.

3 And the qualifying statements are that's
4 based on information from a 1985 National Health
5 Interview Survey. Once again, that information is
6 almost outdated, if not outdated.

7 Q. Do you have any peer-reviewed article that
8 contradicts this, Doctor?

9 A. That contradicts this particular statement?

10 Q. Yes.

11 A. An actual peer-reviewed article that I can
12 give you right now?

13 Q. Yes.

14 A. No, I can't refer you to a specific article.

15 But my qualifying statements would say that
16 as a treater of people that have nicotine addiction,
17 that what I see in my clinical practice is not borne
18 out by this statistic back in 1985.

19 Q. And what you see in your clinical practice
20 are mainly people who are drug abusers, not people
21 who are strictly seeking nicotine treatment;

22 correct?
23 A. My practice includes people who suffer from
24 addiction, multiple addictions, and nicotine
25 addiction is one of them.
26 Q. Now, Doctor, you know, don't you, that
27 Ms. Scott formally began suing for smoking cessation
28 relief in this case in 1996?
29 A. Okay.
30 Q. Do you know that?
31 A. I have heard that, yes.
32 Q. And when did she make her first attempt to

17788

1 use any cessation plan?
2 A. To use a cessation plan? I don't know
3 specifically about a cessation plan.
4 I know previous to 1996 there were some
5 interventions made by a personal physician. There
6 were -- there was a program that was set up on her
7 job that talked about nicotine addiction and some
8 ways of stopping the use of nicotine. That I know
9 of, but --
10 Q. When did -- I'm sorry.
11 A. But when you say into a cessation program,
12 I'm not aware of that.
13 Q. When did you first see Gloria Scott?
14 A. May of 2000.
15 Q. Okay. And that's four years after this suit
16 was filed?
17 A. May of 2000, yes.
18 Q. And she had not been to the Ochsner cessation
19 program when you first saw her, had she?
20 A. Not that I'm aware of.
21 Q. In fact, she didn't go until after she had
22 the first meeting with you?
23 A. That's my understanding.
24 Q. And she only went then because you were told
25 by plaintiffs counsel not to see her again until she
went into a smoking cessation program?
27 A. I wouldn't -- I would have to disagree with
28 that statement.
29 Q. You disagree with that, all right.
30 But at any rate, Gloria Scott quit smoking in
31 September of 2000, did she not?
32 A. Yes.

17789

1 Q. And she hasn't smoked since?
2 A. No.
3 Q. Now, Ms. Jackson also filed suit for smoking
4 cessation help in 1996?
5 A. Yes.
6 Q. And again she didn't see you until four years
7 later, in the year 2000?
8 A. Yes, I first saw her in May of 2000.
9 Q. Do smokers who are motivated to quit wait
10 over four years to try to quit, Dr. LeBlanc?
11 A. I can't answer that yes or no. I would have
12 to qualify that based on my experience with the
13 many, many, many class members that I have
14 treated.
15 Q. You can't answer that question?
16 A. I can't answer that with a yes or a no
17 without qualifying it based on my experience of
18 treating a great deal of class members.

19 Q. In your experience, people don't quit until
20 they are motivated, do they?

21 A. They quit -- there is a number of factors
22 that can lead to someone cessating initially. Now,
23 those factors may well change as the cessation
24 process continues.

25 Q. Doctor, I want you to assume that a smoker
26 testified that she knew cigarettes caused disease,
27 but that she didn't want to quit smoking because she
28 liked smoking.

29 A. Would you agree that a smoker who said that
30 is not motivated to quit?

31 Q. I wouldn't agree that that makes a statement
32 about motivation. I think it speaks more loudly

17790

1 about the addiction itself.

2 Q. You don't think it speaks to motivation at
3 all?

4 A. I didn't say at all. I said I think it
5 speaks even more loudly about the whole process of
6 addiction.

7 It's very difficult to understand but
8 nonetheless is real. What you are actually saying
9 is somebody who knows the health consequences and
10 then not only continues to smoke, but actually says
11 I like to smoke, you have got to understand that
12 even though you are talking about an adult, that
13 that's a process, a behavior that's been going on
14 since adolescence, if not childhood.

15 And you have got to take all that into
16 consideration when you look at a smoker or someone
17 addicted to nicotine.

18 Q. You would agree it reflects a lack of
19 motivation to quit, don't you, Doctor?

20 A. No, I don't agree.

21 Q. You don't.

22 A. Now, Doctor, you have a personal interest in
23 seeing the plaintiffs prevail in this case, don't
24 you?

25 Q. I don't know what you mean by personal
26 interest.

27 A. Well, you consider yourself to be a member of
28 this class, do you not?

29 Q. You asked me if I was a former smoker, and my
30 answer was yes.

31 Q. No, Doctor, my question is you consider
32 yourself to be a member of the class?

17791

1 A. And when we looked at the definition, if I
2 resume smoking and at that point I was concerned
3 about disease and wanted to be -- wanted to once
4 again stop smoking and wanted to be evaluated and
5 treated for any disease, then, yes, I would be a
6 member of the class.

7 MR. WITTMANN:

8 Your Honor, I move to strike.

9 THE COURT:

10 Overruled. Next question, please.

11 MR. WITTMANN:

12 All right.

13 BY MR. WITTMANN:

14 Q. Doctor, turn to your deposition, if you
15 would, at page 288, the one of November 3rd, 2000.

16 A. Page again, sir?
17 Q. 288, line 1.:
18 Okay. All right. Now, do you
19 consider yourself a member of this class?
20 Answer: Yes.
21 Do you recall having been asked that question
22 and giving that answer at your deposition?
23 A. I agree that I gave that answer in response
24 to the last part of several questions that you asked
25 me.
26 Q. Thank you, Doctor.
27 A. You are welcome.
28 Q. Now, you believe as a former smoker you need
29 certain of the tests that the plaintiffs are suing
30 for in this case?
31 A. I'm not smoking at this point, sir. I don't
32 want to participate in a smoking cessation program,
17792
1 and I don't have any concerns at this point as to
2 any health problems that may have developed as a
3 result of my smoking over twelve years ago.
4 Q. Again, can I refer you to your deposition,
5 same page, page 288?
6 Question at line 16: Do you
7 think you need medical monitoring?
8 Answer: Yeah, there is some
9 tests based on my age and health situation
10 that I need to have done.
11 Do you recall having been asked that question
12 and giving that answer?
13 A. I recall giving that answer as a part of
14 several questions that you asked me, yes, sir.
15 Q. Has your opinion about your need for medical
16 tests changed since your deposition?
17 A. Well, no. But you asked me about being a
18 class member.
19 Q. No. My question, Doctor, if you could listen
20 to it: Has your need for medical tests changed
21 since the time you gave your deposition in the year
22 2000?
23 A. At this point I'm not smoking, and at this
24 point I really don't have any concerns about any
25 health issues as it relates to any problems that may
26 have developed because of my smoking over twelve
27 years ago.
28 Q. So you now have no concerns about your
29 medical condition?
30 A. Not at this point I don't.
31 Q. And that's changed from the time you gave
32 your deposition in 2000?
17793
1 A. Well, the answer I gave you was in answer to
2 several questions, so I don't want you to just take
3 it out of context.
4 But, no, I don't have any concerns now about
5 my health as it relates to my former smoking.
6 Q. Again, line 21, Doctor.
7 A. Page, sir?
8 Q. Same page.
9 Do you believe that you need
10 medical monitoring because you were a
11 former smoker?
12 Answer: Yes, sir.

Answer: Probably a stress test
and probably pulmonary function tests.

18 Do you recall having been asked those
19 questions and giving those answers?

20 A. Yes. But qualification: As part of the
21 series of questions that you asked me. Yes, I
22 remember giving you those responses.

23 Q. Did any of those questions modify what you
24 told me in those answers, Doctor?

25 A. It may if you take it out of context. So we
26 might have to read and get the flow of the questions
27 at that point.

28 Q. Would you like to read the entire page?

29 A. I can take the time to do that?

30 Q. You certainly may.

31 A. And that's --

32 Q. I will read it to you, question and answer.

17794

1 MR. CATES:

2 Objection, Your Honor. May we
3 approach?

4 THE COURT:

5 Yes.

6 (At sidebar:)
7 MR. CATES:
8 Your Honor, respectfully, I think
9 he's badgering this woman. He's taking
10 these things out of context and he's
11 repeating himself until he gets the answer
12 he wants to. We did that all day
13 yesterday.

14 And she is trying desperately to
15 answer yes or no and to explain it when
16 necessary. He's testifying.

17 THE COURT:

18 Well, let me suggest to you that I
19 disagree with that last statement you just
20 made. She's never said she wants to
21 explain her answer. She wants to give
22 some background -- or she uses a different
23 phrase.

She has not yet in most instances
said yes or no to a question.

26 Mr. Wittmann says: Did I ask you that
27 question and did you give that answer, and
28 she makes a speech; okay? Now she wants
29 to read the whole page.

30 She's not responding properly. She
31 can answer yes or no, and then she can
32 explain.

17795

1 She's still giving speeches and she's
2 delaying it, and he's not going to let her
3 get away with it.

4 MR. CATES:

5 It's repetitive.

6 THE COURT:

7 It's being repetitive because he's
8 not getting an answer to the question that
9 I told her she had to give: Yes or no.

10 explain if you like to, or I'm sorry, I
11 can't answer that question. Then we move
12 along.

13 MR. CATES:

14 I understand.

15 THE COURT:

16 We are not going to be repetitive.

17 We are not going to read the page.

18 Objection overruled. Next question.

19 If you want to say something, say it.

20 MR. CARTER:

21 I just want to know is it okay for
22 Mr. Cates to talk to the witness to be
23 sure that --

24 MR. CATES:

25 We will do it on the break.

26 THE COURT:

27 We are not going to break before
28 lunch.

29 But I have told her at least four
30 times yesterday: Yes or no, and you may
31 explain. I don't know what else to do.

32 MR. CARTER:

17796

1 Thanks.

2 (In open court:)

3 BY MR. WITTMANN:

4 Q. Doctor, when you gave your deposition back in
5 November of 2000, you were under oath, were you not?

6 A. Yes.

7 Q. And when you told us you were a class member
8 in this case, you believed that; correct?

9 A. In response to some of the questions you
10 asked, yes, I gave that answer.

11 Q. And when you told us that you needed medical
12 monitoring, you were being truthful with us at that
13 time?

14 A. At that point, that was the answer I gave to
15 some of your questions, yes.

16 Q. And so today you say you don't need medical
17 monitoring; correct?

18 A. Today I don't have any concerns about any
19 health problems that may have arisen as a result of
20 my smoking over twelve years ago.

21 Q. So to answer my question, you don't need
22 medical monitoring?

23 A. At this point I don't have any concerns, so I
24 don't have any need for medical monitoring.

25 Q. Could I have an answer to the question,
26 Doctor?

27 THE COURT:

28 Doctor, I will remind you again the
29 rules require that if you can answer a
30 question with a yes or no, you must do
31 that.

32 If you would like to explain your

17797

1 answer, you may do that.

2 If you are not able to answer the
3 question, say I'm not able to answer the
4 question.

5 Ask the witness a question, please,
6 Mr. Wittmann.

7 BY MR. WITTMANN:
8 Q. Doctor, as you sit here today, you are
9 telling this jury you don't need medical monitoring?
10 A. No, I don't need medical monitoring at this
11 point.
12 Q. Thank you.
13 Have you ever had a CT scan?
14 A. I've had CT scans before.
15 Q. A spiral CT scan to test for lung cancer?
16 A. No, I have not had a spiral CT scan to test
17 for lung cancer.
18 Q. Have you ever taken an exercise stress test?
19 A. Yes.
20 Q. When did you do that?
21 A. When I turned 40.
22 Q. I won't ask you how long ago that was,
23 Doctor.
24 A. Thank you.
25 Q. Have you ever had a pulmonary function test?
26 A. I have had part of a pulmonary function test
27 that takes place after surgery, but I've not had a
28 formal pulmonary function test.
29 Q. Doctor, the plaintiffs counsel in this case
30 asked you to participate in a mock trial, did they
31 not?
32 A. Yes.

17798

1 Q. And when did that take place?
2 A. A year or two -- maybe two years ago.
3 Q. Okay. And during that mock trial you were
4 asked questions by plaintiffs counsel and got
5 critiqued on your answers; is that right?
6 A. It's correct I was asked questions by
7 plaintiffs counsel.
8 Q. And did you answer them?
9 A. I answered them.
10 Q. And did attorneys give you feedback about
11 your answers?
12 A. Yes.
13 Q. And they critiqued your answers?
14 A. They gave me feedback about my answers. Yes,
15 they critiqued my answers.
16 Q. Okay. Now, Doctor, since you are a member of
17 this class, you don't expect us to believe that you
18 are a fair and impartial expert, do you?
19 A. The answer to that is no, because I am not
20 asking to participate in a tobacco cessation program
21 at this point and I don't have any health concerns.
22 Q. But you were a class member in 19 -- 2000
23 when I took your deposition?
24 A. In 19 -- in the year 2000 you asked me
25 several questions and I gave you a response yes to
26 some of those questions as it related to being a
27 class member and having some health concerns.
28 Q. You considered yourself a class member in the
29 year 2000, did you not?
30 A. Yes.
31 THE COURT:
32 That's repetitive, Mr. Wittmann. She
17799
1 answered that question several times.
2 Next question, please.
3 BY MR. WITTMANN:

4 Q. Do you know what bias means, Doctor?
5 A. Yes.
6 Q. You are biased in favor of the plaintiffs in
7 this case because you were a plaintiff; correct?
8 A. You are asking me a question?
9 Q. I'm asking you a question.
10 A. That is not correct, sir.
11 Q. So you are not biased?
12 A. I am not biased, sir.
13 Q. Do you want your fellow class members to lose
14 this case, Doctor?
15 A. Well, because -- the answer to that is I
16 can't give a yes or no answer because I'm not a
17 member of the class, and I --
18 Q. I said fellow class members.

19 THE COURT:

20 Mr. Wittmann, allow the witness to
21 answer completely and don't interrupt her,
22 please.

23 MR. WITTMANN:

24 I'm sorry, Your Honor.

25 THE COURT:

26 Doctor, this is the question that you
27 didn't have an opportunity to answer: Do
28 you want your fellow class members to lose
29 this case, Doctor?

30 A. And my answer to that is I can't give a yes
31 or no answer. What I can say is I am not a member
32 of the class.

17800

1 MR. WITTMANN:

2 Your Honor, I would move to strike
3 everything after she said she can't --

4 THE COURT:

5 The answer has been sufficiently
6 given. Next question, please,

7 Mr. Wittmann.

8 BY MR. WITTMANN:

9 Q. So you can't say as you sit here whether you
10 do or do not want the class members in this case to
11 win; is that correct?

12 THE COURT:

13 She answered that question. She said
14 she was unable to answer that question
15 with a yes or no.

16 Next question please, Mr. Wittmann.

17 MR. WITTMANN:

18 Your Honor, I have no further
19 questions. Thank you very much.

20 THE COURT:

21 Any other cross-examination of this
22 witness?

23 MR. SCHNEIDER:

24 To make a proffer, Your Honor.

25 THE COURT:

26 Well, we don't do that in front of
27 the jury.

28 But any questions on cross-
29 examination of this witness by any defense
30 counsel?

31 Redirect, Mr. Cates?

32 MR. CATES:

17801

1 Thank you, Your Honor.
2 -- -- --
3

4 BY MR. CATES:
5 Q. Dr. LeBlanc, for an extended period of time
6 yesterday and also this morning, you were asked a
7 series of questions about a class definition, as
8 late as five minutes ago.

9 Did you have any hand in preparing that class
10 definition?

11 A. No, sir.

12 Q. You are not an attorney here today?

13 A. No, sir.

14 Q. You are here as a physician here today?

15 A. Yes, sir.

16 Q. In fact, on yesterday, we went back and forth
17 for a considerable period of time regarding whether
18 or not you understood that the word habit was in
19 that class definition. Do you remember that?

20 A. I remember the discussion, yes.

21 Q. And do you remember I think Mr. Wittmann
22 thought it wasn't in, you thought it was in, and --
23 strike that.

24 Do you recall that you were correct that
25 habit was in that definition?

26 A. I recall that habit was in that definition,
27 yes.

28 Q. Mr. Wittmann then on yesterday asked a series
29 of hypothetical questions regarding class membership
30 of an individual who smoked a pack -- one pack of
31 cigarettes more than twenty years ago. Do you
32 remember that question?

17802

1 A. Yes.

2 Q. Can you think of any reason as you sit here
3 today as a clinical psychiatrist with an emphasis on
4 addiction regarding why someone who smoked one pack
5 of cigarettes twenty years ago or more than twenty
6 years ago and hasn't smoked since would want or need
7 cessation if they weren't still smoking?

8 A. No. Not only do I not see why someone would
9 want to be a member of the class, but it just
10 doesn't play out in the class members that I treat.
11 That is not typical nor common in the class members
12 that I have treated over the years.

13 Q. Do the class members that you treat typically
14 still smoke?

15 A. Oh, yes. They are active in their addiction.

16 Q. Do the class members that you treat want to
17 stop smoking typically?

18 A. Yes. The vast, vast majority of people that
19 I treat will come into my office and say just that:
20 I want to stop smoking.

21 Q. Why would someone who hasn't smoked in twenty
22 years want to participate in some cessation program
23 from your experience?

24 A. I really can't answer that. I can only
25 answer what I know in terms of the hundred of class
26 members that I have treated, and that just has not
27 come up.

28 Q. And I think you said on yesterday you
29 currently are responsible for more than five hundred
30 patients?

31 A. Well more than five hundred patients.
32 Q. And that doesn't come up with those patients
17803

1 that you treat that are members of this class in
2 this state?

3 A. Nor has it come up over the years when I was
4 responsible for many more patients than the ones I
5 have now.

6 Q. Dr. LeBlanc, were you also asked a number of
7 questions about your depositions in this matter?

8 A. Yes.

9 Q. When were these depositions taken?

10 A. The one deposition that was referred to the
11 most --

12 Q. Deposition, deposition.

13 A. Deposition was taken in November of 2000.

14 Q. And were you deposed on another occasion?

15 A. Yes.

16 Q. Do you remember the length of time those
17 depositions took?

18 A. The deposition in --

19 MR. WITTMANN:

20 Objection, Your Honor. Relevance.

21 THE COURT:

22 Overruled. Answer the question, if
23 you are able to.

24 MR. CATES:

25 Thank you, Your Honor.

26 A. The deposition in 2000 took over seven
27 hours. And the deposition in 2002, I recall three
28 to four hours maybe.

29 Q. Do you recall how many pages those
30 transcripts consisted of regarding your testimony
31 over that extended period of time, several years ago?

32 A. I don't remember for 2002, although it's here

17804

1 if you need me to give you an answer.

2 But for the deposition I made reference to
3 this morning, it looks like almost three hundred
4 pages.

5 Q. Did you memorize that before you came to
6 Court today?

7 A. No, sir.

8 Q. Dr. LeBlanc, when you gave those depositions
9 under oath several years ago, were they based upon
10 knowledge and information and experience that you
11 had at that time?

12 A. Yes. And can I qualify that?

13 Q. Certainly.

14 A. The attorney made reference to my saying that
15 DSM IV was the Bible, and I feel that that needs to
16 be explained. I did make that statement as it
17 related to making diagnosis --

18 MR. WITTMANN:

19 Objection, Your Honor. May we
20 approach?

21 THE COURT:

22 You may approach.

23 (At sidebar:)

24 MR. WITTMANN:

25 He's asking a question, and she's now
26 about to make a speech again.

27 THE COURT:

28 It's certainly not responsive to the
29 question, Mr. Cates.

30 MR. CATES:

31 I understand.

32 THE COURT:

17805

1 Ask her another question.

2 (In open court:)

3 THE COURT:

4 Next question, please, Mr. Cates.

5 MR. CATES:

6 Thank you, Your Honor.

7 BY MR. CATES:

8 Q. Dr. LeBlanc, did you do your best at the time
9 of those depositions to answer those questions
10 accurately and truthfully and completely?

11 A. Yes. This is a very serious matter, and I
12 have done my best, as always, as it relates to this
13 case.

14 Q. When you testified on yesterday and today,
15 you realize that you were under oath, and have you
16 made a conscious effort to answer those questions on
17 yesterday and today truthfully and to the best of
18 your ability based on over 19 years as a clinical
19 psychiatrist treating members of this class?

20 MR. GAY:

21 Objection, repetitious.

22 THE COURT:

23 Overruled. Answer the question, if
24 you are able to.

25 MR. CATES:

26 Thank you.

27 A. It doesn't take an effort, sir. When you
28 have faith, when you have been trained, when you
29 have got experience and when what you do works, you
30 don't have to put forth effort to answer questions.
31 You just tell based on your faith, your knowledge,
32 your training and what you do.

17806

1 Q. Dr. LeBlanc, since you brought up faith and
2 training and effort, has anything that any of the --
3 strike that.

4 Has anything that Mr. Wittmann shown you on
5 yesterday or today change your opinions or
6 conclusions regarding what you have done in
7 connection with this case?

8 A. No, with qualification.

9 Across the board, the information that was
10 presented in this Court is outdated. When you look
11 at those statistics come from the '80s, when you
12 look at even DSM IV, the cutoff for research for
13 DSM IV was 1992.

14 Q. Dr. LeBlanc, has anything that has been shown
15 to you on this screen yesterday or today changed any
16 of your opinions regarding your opinions that class
17 members in this case from your experience need
18 cessation programs to help them quit smoking?

19 A. My opinion -- no, my opinion has not
20 changed. Class members need cessation -- formal
21 cessation, not informal cessation -- and they need
22 medical monitoring to help them face serious health
23 consequences and possible death.

24 MR. WITTMANN:

25 Objection, Your Honor.
26 THE COURT:
27 Sustained. The last portion of that
28 question will be stricken -- the last
29 portion of the answer, rather, the portion
30 that reads, "and they need medical
31 monitoring to help them face serious
32 health consequences and possible death,"

17807

1 will be stricken. It was not responsive
2 to the question.

3 Next question, please.

4 BY MR. CATES:

5 Q. Is it fair to state that your opinions
6 haven't changed, Dr. LeBlanc?

7 A. That is true. My opinions have not changed.

8 Q. Did any one of these plaintiffs lawyers that
9 are involved in this case tell you what to say
10 today?

11 A. No, sir. Not anymore.

12 Q. You don't work that way, do you?

13 A. Never did.

14 MR. CATES:

15 I don't have any further questions,
16 Your Honor.

17 Thank you, Dr. LeBlanc.

18 Thank you, ladies and gentlemen.

19 THE COURT:

20 Step down, Doctor.

21 THE WITNESS:

22 Thank you.

23 THE COURT:

24 Counsel approach the bench, please.

25 (At sidebar:)

26 THE COURT:

27 Is it your plan or -- strike that.

28 Is that your last witness on
29 plaintiffs' case in chief, Mr. Herman?

30 MR. RUSS HERMAN:

31 Yes.

32 THE COURT:

17808

1 You indicated earlier that you had
2 some things that you wanted to do or say
3 after the last witness testified in your
4 case in chief. Are you ready to do that
5 now?

6 MR. RUSS HERMAN:

7 Yes, I am.

8 THE COURT:

9 All right. I intend to tell the
10 jurors we are going to recess until
11 probably -- we are going to recess for
12 lunch until 1:00 and see where we are
13 going; okay?

14 MR. WITTMANN:

15 Okay.

16 MR. RUSS HERMAN:

17 Judge, do you want me to make that
18 statement now?

19 THE COURT:

20 No.

21 MR. RUSS HERMAN:

22 Okay.
23 (In open court:)
24 THE COURT:
25 We are going to start our luncheon
26 recess a little early today. We are going
27 to recess until 1:00. 1:00. 1:00.

28 And you will all be here and ready to
29 go at 1:00 promptly? Thank you very
30 much. See you at 1:00.

31 (In open court without a jury
32 present:)

17809

1 THE COURT:
2 Let the record reflect the jury has
3 left the courtroom.
4 Anything for the record by plaintiffs
5 counsel, Mr. Herman?

6 MR. RUSS HERMAN:
7 I have to step up. I couldn't hear
8 back there, Judge.

9 THE COURT:
10 The jury has left the courtroom.
11 Anything for the record by plaintiffs
12 counsel?

13 MR. RUSS HERMAN:
14 Not at this time, Your Honor.
15 THE COURT:
16 Defense counsel?
17 MR. SCHNEIDER:
18 Your Honor, I want to make a brief
19 proffer of the cross-examination of
20 Dr. LeBlanc relating to Your Honor's
21 ruling, just briefly.

22 THE COURT:
23 All right. Make your proffer,
24 please.

25 MR. SCHNEIDER:
26 Your Honor ruled there would be no
27 testimony concerning the reasons for
28 smoking by Deania Jackson and
29 Gloria Scott, which is a topic addressed
30 in detail in the expert reports of
31 Dr. LeBlanc entitled Psychiatric Report on
32 Gloria Scott, Psychiatric Report on Deania

17810

1 Jackson.

2 But for Your Honor's ruling
3 restricting testimony on that point, we
4 would have conducted cross-examination on
5 the reasons that Deania Jackson and
6 Gloria Scott smoked, their admissions that
7 they have made on the points on that in
8 Dr. LeBlanc's session notes, and
9 challenged her credibility based upon
10 statements made by the plaintiffs, Deania
11 Jackson and Gloria Scott, on the reasons
12 that they smoked and the effect of
13 nicotine on them.

14 And I wanted to make that proffer for
15 the record.

16 MR. RUSS HERMAN:
17 Your Honor, cross-proffer?
18 THE COURT:

19 I understand that. And for the
20 record, my rulings were based upon the
21 Louisiana Supreme Court's latest opinion
22 in this case defining the issues that were
23 before this jury and eliminating
24 individual issues and limiting this phase
25 to class-wide issues and on fault and
26 liability by the defendants. That's the
27 reason for my ruling.

28 Mr. Herman?

29 MR. RUSS HERMAN:

30 Cross-proffer: We stand on the
31 Supreme Court opinion and Your Honor's
32 prior rulings and the briefings we have

17811

1 submitted previously.

2 THE COURT:

3 Mr. Herman, anything else by the
4 plaintiffs?

5 MR. RUSS HERMAN:

6 Not at this time, Your Honor.

7 THE COURT:

8 Well, it's time to do whatever you
9 intend to do. I understand that you
10 have -- or you informed the Court --

11 MR. RUSS HERMAN:

12 I can't do that --

13 THE COURT:

14 -- you have no further witnesses.

15 MR. RUSS HERMAN:

16 That's why I asked whether I should
17 do it before the jury left.

18 My statement would have been before
19 the jury, Your Honor, at this time
20 plaintiffs will not call any more
21 witnesses to the stand in their case in
22 chief or read any more documents to the
23 jury at this time, and we intend to rest
24 after some other matters are ruled on and
25 subject to rebuttal.

26 That would have been my statement.
27 I'm willing to make it right now just as I
28 have made it.

29 THE COURT:

30 I will allow you to make that
31 statement that plaintiffs rest or intend
32 to call no more witnesses when the jury

17812

1 returns after the luncheon recess.

2 But if you want to take up the other
3 matters that you wish to attempt to get
4 into evidence or do anything else and you
5 are ready to do it now, I will entertain
6 it.

7 MR. RUSS HERMAN:

8 Yes, sir.

9 We have submitted to defense counsel,
10 to Special Master and Your Honor a list of
11 documents which were ruled on by the
12 Special Master as not privileged which
13 have yet to be ruled on by Your Honor. We
14 would like to get those in evidence before
15 we rest.

16 There are four journal articles I'm
17 advised that we would like to get in
18 evidence before we rest.
19

20 Other than that, we have no
21 outstanding issues.

22 Just so that Your Honor is alerted,
23 and we will be back at 1:00 as Your Honor
24 has directed, we do not think it is
25 possible to get a reply brief in on
26 directed verdict, have deposition hearings
27 and prepare for witnesses under cross next
28 week and assemble all the cross documents
29 and serve them all in this compressed time
30 period.

31 I thought that, as I'm sure everybody
32 did, that this case would have ended
 yesterday at the latest.

17813

1 I understand the problems. We have
2 had problems for ten weeks now flying
3 witnesses in and out, across the country,
4 interrupting their testimony, et cetera,
5 et cetera, and I believe there is going to
6 be a series scheduling problem.

7 We filed a motion yesterday which is
8 yet to be heard or set that says we have
9 been under we believe a matter that Your
10 Honor has exercised discretion on where
11 these guys -- excuse me, these gentlemen
12 and ladies have had at least four or five
13 people prepare for cross-examination of a
14 single witness and at least some of them
15 sometimes cross-examined with all four
16 lawyers.

17 We can only assign one lawyer to
18 prepare a cross.

19 It's a lot easier for them and they
20 have a serious advantage on the 48-hour
21 rule because with respect to us, we have
22 got one lawyer who has got to go through
23 everything within forty-eight hours to
24 prepare a cross, and they have got four
25 different people they can assign to four
26 different areas if they choose, and we
27 have been severely limited.

28 Our motion, which we ask Your Honor
29 to consider, is either allow us one more
30 member for nonrepetitive cross, or to
31 require that instead of forty-eight hours'
32 notice, we get more than forty-eight hours'

17814

1 notice so that the single member of our
2 group who is assigned to cross-examination
3 will have sufficient time to prepare
4 without being disadvantaged.

5 I understand this matter is entirely
6 within Your Honor's discretion. I don't
7 ask for a ruling now, but I will ask Your
8 Honor to please consider the issue.

9 THE COURT:

10 I have the motion. I don't have a
11 response from the defendants. I suppose I
12 will get one before very long.

13 MR. WITTMANN:
14 Yes, Your Honor, we will respond.
15 THE COURT:
16 And I will see where the points of
17 difference are and, if necessary, I will
18 have a ruling or a hearing.
19 MR. RUSS HERMAN:
20 Yes, Your Honor.
21 Just one other comment that
22 Mr. Bailey reminds me, and that is because
23 still of the large number of witnesses in
24 the defendants' case on both the will
25 call, the may call, and now an extended
26 deposition cut list, it compounds our
27 problems in terms of preparation. And I
28 just wanted to state that.
29 MR. WITTMANN:
30 I would just point out they had five
31 hundred witnesses on their list, but
32 that's --

17815

1 THE COURT:
2 The tentative schedule that I have
3 talked to counsel about is a Wednesday,
4 today, 3:00 p.m. deadline for defendants'
5 posttrial memorandums.

6 And if I recall correctly, Mr. Long
7 indicated earlier today that you could
8 meet that schedule?

9 MR. LONG:

10 Yes.

11 THE COURT:

12 Okay. Mr. Herman, I have given the
13 plaintiffs until 4:00 p.m. on Friday to
14 respond. Are you telling me that's not
15 doable?

16 MR. RUSS HERMAN:

17 I'm saying that -- no, I'm not going
18 to tell you that that's not doable because
19 since Your Honor issued that ruling, we
20 have been trying to anticipate and we have
21 had people working on it. So I'm not
22 going to say that.

23 What I am going to say is we can't go
24 through a depo hearing, get our brief in,
25 prepare for oral argument, and prepare for
26 two or three witnesses next week within
27 this compressed time frame. We just don't
28 have unfortunately the ability to do that.

29 THE COURT:

30 Do the plaintiffs' side have the
31 defendants' witness plan for next week at
32 this point?

17816

1 MR. RUSS HERMAN:

2 We have been told there are two to
3 four witnesses next week, Spagnola and
4 Eiswirth, Louria, and there was one other
5 name.

6 THE COURT:

7 Mr. Long?

8 MR. LONG:

9 Early this morning before we started

10 when we were up at your bench, I started
11 to tell the plaintiffs who the three
12 definites are for next week, but nobody
13 seemed interested at the time.

14 But they are Spagnola, followed by
15 Eiswirth, followed by Viscusi. Those are
16 the three witnesses, time available, we
17 will call next week.

18 MR. RUSS HERMAN:

19 Viscusi wasn't even on the will call
20 list the last time.

21 So I don't know how we are
22 expected -- well, I know, Mr. Belasic,
23 it's not a problem for you.

24 I'm advising the Court it is a
25 problem for us, just as it was a problem
26 that we had to send Dr. Burns back, we
27 couldn't do anything in the interim, and
28 then we had to fly him back in. Just so
29 you will know, he came back seven times.

30 These problems happen. We had to get
31 Arnett back and forth. We had to get
32 Jaffe back and forth.

17817

1 I'm advising the Court in advance
2 that we have a problem, that's all.

3 THE COURT:

4 I would like to hear the arguments on
5 the posttrial motions on Monday, April 7,
6 at 9:00.

7 And I have yet to set any deposition
8 hearings on the designations, but I'm
9 going to require -- you may want to write
10 this down -- I'm going to require the
11 defendants to file with the Special Master
12 and inform the plaintiffs of all their
13 designations on the list of depositions
14 that I received this morning by Friday
15 noon. Friday noon. Friday noon.

16 And after that is done, the
17 plaintiffs will have an opportunity to
18 counterdesignate.

19 MR. MUEHLBERGER:

20 Your Honor, may I clarify?

21 We have already filed our
22 designations a year and a half ago.
23 Plaintiffs counterdesignated a year and
24 half ago. There is no new work to do.

25 THE COURT:

26 Well, Mr. Muehlberger, we had a
27 conversation this morning, and I
28 specifically if these were new
29 designations and new depositions, and my
30 impression from the discussion was that
31 the answer to that question was yes.

32 MR. MUEHLBERGER:

17818

1 I'm sorry, Your Honor.

2 THE COURT:

3 Which is why I was a little bit out
4 of sorts with the answer.

5 Now, if the answer to that question
6 is no, then you don't have anything to

7 give to the defendants --
8 MR. MUEHLBERGER:
9 Right.
10 THE COURT:
11 I mean to plaintiffs counsel in terms
12 of designations; is that correct?

13 MR. MUEHLBERGER:
14 Yes, Your Honor.
15 May I try to explain, very briefly?
16 THE COURT:
17 Please, please. Let's take a
18 deposition that I spent some hours ruling
19 on earlier, and how about Mr. Teague,
20 Dr. Teague?
21 Did we not do Dr. Teague's
22 deposition, Mr. Muehlberger?

23 MR. BOYCE:
24 I will address Dr. Teague. I did
25 Dr. Teague.

26 THE COURT:
27 Now, Dr. Teague's deposition is
28 listed here, Dr. Teague's deposition has
29 not been played that I'm aware of in the
30 plaintiffs' side.

31 What is there to do with regard to
32 Dr. Teague's deposition for the

17819

1 defendants' case as of today?

2 MR. BOYCE:
3 Dr. Teague is one of the witnesses
4 for whom each side made affirmative
5 designations. The plaintiffs made
6 affirmative designations, we countered,
7 and they counter-countered. Those were
8 the arguments Your Honor heard last
9 winter.

10 The defendants also filed affirmative
11 designations for Dr. Teague to which the
12 plaintiffs countered and we counter-
13 countered.

14 THE COURT:
15 Same depositions?
16 MR. BOYCE:
17 Mostly from the same depositions.
18 When we had the hearings, we offered
19 to argue all the designations at once,
20 their affirmative designations as well as
21 our affirmative designations.

22 Plaintiffs didn't want to do that at
23 the time for reasons that were
24 understandable.

25 What is left to be argued now are the
26 defendants' affirmative designations and
27 the plaintiffs' counters.

28 THE COURT:
29 To what extent do the defendants'
30 affirmative designations at this point
31 incorporate or designate new language,
32 that is, new questions and answers in that

17820

1 deposition that I have never ruled on, if
2 you can tell me?

3 MR. BOYCE:

4 There are some areas that we did not
5 address in the past. There are new --
6 they were our affirmative designations,
7 they were materials that we thought we
8 would play in our case.

9 THE COURT:

10 That are different than your
11 counterdesignations to plaintiffs?

12 MR. BOYCE:

13 Yes. We tried to keep our
14 counterdesignations for the most part
15 limited to the plaintiffs' affirmative
16 designations.

17 But if there was something else in
18 that deposition that we thought we might
19 play in our case, we listed it as an
20 affirmative designations.

21 Our designations were due on the same
22 day, so it was hard for us to anticipate
23 what the plaintiffs would do such that we
24 could wait and make our designations or
25 our counterdesignations.

26 THE COURT:

27 So are you telling me now that the
28 plaintiffs' side has received the
29 defendants' affirmative designations in
30 these 18 depositions sometime in the
31 past?

32 MR. BOYCE:

17821

1 Yes, sir. I can only speak for the
2 Reynolds witnesses, but, yes, all of our
3 designations were filed years ago.

4 THE COURT:

5 Is that true with regard to all
6 defendants?

7 MR. BOYCE:

8 With one exception. Dr. Leonard
9 Hudzinski is the only exception on that
10 issue.

11 MR. MICHAEL GERTLER:

12 We have a problem with Fisher, Your
13 Honor, not to interrupt. I don't think
14 that's anywhere near ready to be played
15 because we originally started with
16 designations, Your Honor, that you asked
17 us to try to work together and pare down,
18 and we never got there.

19 And as you know, it was never
20 played. So we are back to square one with
21 Dr. Fisher.

22 THE COURT:

23 Is there any quarrel from plaintiffs
24 counsel with the statement that
25 Mr. Muehlberger has made, that you have
26 had the affirmative designations for some
27 period of time?

28 MR. RUSS HERMAN:

29 Yes, Your Honor.

30 The Teague deposition and the Rodgman
31 depositions, as I recall, with all
32 designations and counterdesignations, were

17822

1 four to six hours long apiece.
2

3 We asked the defendants, particularly
4 R. J. Reynolds, to please look at them to
5 see if they could be reduced, and they
said no.

6 As a result, there are some un --
7 there are parts of those depositions
8 which, as far as we know, still need to be
9 looked at because the defendants have
10 never settled on what it is that they are
11 really designating; okay?

12 With regard to others on that list,
13 LeVan, Johnston and the Philip Morris
14 designees, I know that we submitted in
15 those -- and Levy, and Bonhomme who they
16 have now listed today, Merlo, we have
17 submitted some time ago designations.

18 Some of those were not ruled on. For
19 example, in Levy, they still objected to
20 one exhibit and, since they objected to
21 it, we elected, since it hadn't been ruled
22 on, to play Levy.

23 Now, what new things they are
24 designating, I don't know. I had
25 understood at the bench conference and the
26 record will reflect that Mr. Copley said
27 that there were new things that they had
28 designated, and I said I don't think we
29 are going to have to redesignate.

30 And maybe I'm in error about that,
31 but I do not agree with the position that
32 R. J. Reynolds is taking with regard to

17823

1 these depositions.

2 THE COURT:

3 We are going to attempt to resolve it
4 this way, and I'm going to give you some
5 notice so you will be prepared.

6 When the jury is discharged for the
7 day today, counsel will be required to
8 confer with Special Master Gianna to
9 delineate and try to define what needs to
10 be ruled on by me, and hopefully the order
11 in which these depositions might be
12 presented, if this letter doesn't contain
13 the order -- and if it does, you can tell
14 us that now -- and how best we can
15 approach trying to -- trying to determine
16 what's already been ruled on and what has
17 yet to be ruled on in all these
18 depositions, and then talk about
19 scheduling.

20 Mr. Long tells me that he has
21 witnesses scheduled for Monday, April 7;
22 that is correct, Mr. Long?

23 MR. LONG:

24 Yes, sir.

25 THE COURT:

26 Will you be able to start by
27 11:00 a.m. if we have the hearings on the
28 motions at 9:00?

29 MR. LONG:

30 What I wanted to mention this morning

31 is we would prefer to, not knowing when
32 the hearings will stop, start at 1:00.

17824

1 Rather than have the witness come over and
2 wait, just start at 1:00.

3 That way, we may lose thirty minutes
4 that day, but it's a definite start time
5 that I can have the witness here.

6 THE COURT:

7 I will consider that.

8 Mr. Herman, on your wrap-up issues,
9 is it your position that you want to deal
10 with these documents that the
11 Special Master has ruled on before you
12 technically rest?

13 MR. RUSS HERMAN:

14 Unless they will stipulate or we can
15 reach something that will hold up on
16 appeal that Your Honor can schedule those
17 after we rest.

18 But we would like them before the
19 depo cuts so that we may use whatever Your
20 Honor has ruled in cross-examination.

21 THE COURT:

22 If a stipulation can be reached to
23 allow you to present those issues after
24 you make the statement "Plaintiffs rest,"
25 I think that's sufficient.

26 But I think you need to first find
27 out if you can get that agreement before
28 we --

29 MR. RUSS HERMAN:

30 I asked Mr. Long to check with his
31 people.

32 MR. WITTMANN:

17825

1 That's fine with us, Judge.

2 THE COURT:

3 That's as to all defendants,
4 Mr. Wittmann?

5 MR. WITTMANN:

6 Yes.

7 MR. RUSS HERMAN:

8 So it's stipulated between plaintiffs
9 and defendants that after plaintiffs rest,
10 the Court will determine the privilege
11 rulings that the Court has not yet
12 determined, plaintiffs may then introduce
13 those documents into plaintiffs' side of
14 the case and utilize them in cross-
15 examination.

16 THE COURT:

17 You also made mention of I think you
18 said journal articles, if I wrote it down
19 correctly.

20 MR. RUSS HERMAN:

21 Four journal articles that I'm
22 advised of have not been ruled on.

23 THE COURT:

24 Are they under advisement at this
25 point?

26 MR. LEGER:

27 They are, Your Honor.

28 THE COURT:
29 So they have been offered but not
30 ruled on.
31 MR. LEGER:
32 They were offered last week in a
 17826
1 hearing, and Your Honor hasn't ruled on
2 those.
3 THE COURT:
4 If that ruling can be included in
5 that stipulation.
6 MR. RUSS HERMAN:
7 Wait a minute. I want to make sure
8 that the stipulation is on the record, it
9 will be bind everybody through any appeals
10 or writs. Is that your understanding?
11 MR. WITTMANN:
12 That's my understanding, limited to
13 the documents on the list you gave us this
14 morning dated April the 2nd, 2003.
15 MR. LEGER:
16 And the five JAMA articles that the
17 Court has under advisement at this time
18 that we argued last week on youth
19 targeting.
20 THE COURT:
21 Mr. Wittmann, I have two sheets of
22 paper with that date on it. You have only
23 got one in your hands.
24 MR. WITTMANN:
25 That's correct.
26 THE COURT:
27 Let's be clear about it. I have got
28 one sheet that starts -- it's two columns
29 and the first number is 18 on the top of
30 the left, and the second sheet is almost
31 two full columns and the top number on the
32 left-hand column is 258.
 17827
1 Which one do you have?
2 MR. WITTMANN:
3 Just the 258.
4 MR. LONG:
5 I think there is one sustained and
6 one overruled; isn't that correct?
7 THE COURT:
8 The April 2 list that starts with
9 No. 18 is Judge Ganuchea has not ruled on
10 these exhibits, dash, privilege, sustained
11 by Special Master Gianna.
12 So apparently Gianna says they are
13 privileged.
14 MR. RUSS HERMAN:
15 And we are not contesting those.
16 THE COURT:
17 So there is nothing to rule on?
18 MR. RUSS HERMAN:
19 We are not appealing whatever
20 Mr. Gianna has ruled on.
21 THE COURT:
22 Then you are right, Mr. Wittmann.
23 There is one list dated April 2, and the
24 first number on the top left-hand column

25 is 258.

26 MR. WITTMANN:

27 That's correct. Those are the
28 documents.

29 THE COURT:

30 And that's the group of exhibits
31 Mr. Herman refers to in his attempted
32 stipulation.

17828

1 MR. WITTMANN:

2 That's my understanding.

3 THE COURT:

4 And then Mr. Leger has indicated that
5 there are four --

6 MR. LEGER:

7 Actually five.

8 THE COURT:

9 Five Wall Street Journal articles?

10 MR. LEGER:

11 No, Journal of the American Medical
12 Association articles.

13 THE COURT:

14 That I have heard argument on but
15 have taken under advisement. And the
16 exhibit numbers are --

17 MR. LEGER:

18 The exhibit numbers are 0225.01,
19 0230.01, 3723.01, 4642.01 and 4478.01,
20 Your Honor.

21 THE COURT:

22 And part of the stipulation is that I
23 will issue a ruling on the admissibility
24 of those documents and they will be
25 included, if admitted, in plaintiffs' case.

26 MR. WITTMANN:

27 That's the stipulation, yes, Your
28 Honor.

29 THE COURT:

30 All right.

31 MR. LOUIS GERTLER:

32 Your Honor, there are also two B&W

17829

1 documents you took under advisement as
2 well yesterday, Scott Plaintiffs' Exhibit
3 2428 and 2042.

4 THE COURT:

5 Yes, I recall that I did take two of
6 those under advisement and I haven't ruled
7 on them.

8 And Mr. Schneider, you are --

9 MR. SCHNEIDER:

10 Yes, Your Honor, I said that I would
11 endeavor to find out on Exhibit 2428 who
12 Mr. Crawford was.

13 And the information that I have is
14 Mr. Crawford was the chairman of IMASCO, a
15 company located in Canada.

16 And on Exhibit 2042, I said that I
17 would look into who M. Oldman was.

18 What I learned about him is that he
19 was a psychologist at the University of
20 Southampton in England. He was a
21 consultant to BATCO is the best I was able

22 to discover.

23 So I put that information in the
24 record.

25 THE COURT:

26 And the name of the gentleman who was
27 with IMASCO in 2428?

28 MR. SCHNEIDER:

29 Crawford. Mr. Crawford.

30 THE COURT:

31 Crawford.

32 I think the requested stipulation is
17830

1 you allow me to rule on those two
2 documents that I have under advisement at
3 this point, together with all of the other
4 documents we have been talking about.

5 MR. SCHNEIDER:

6 Yes, I understand that, Your Honor.
7 And yes, I am agreeable to that.

8 We pointed out those individuals were
9 one from Canada, one from BATCO, and that
10 was the information Your Honor needed to
11 rule on the objections I made.

12 So I'm agreeable to you ruling on
13 that.

14 THE COURT:

15 And on the issues, the April 2 list
16 starting with 258, I presume I can rule on
17 what's already been submitted without
18 argument?

19 MR. WITTMANN:

20 I think that's correct.

21 MR. SCHNEIDER:

22 No.

23 MR. WITTMANN:

24 I stand corrected.

25 MR. SCHNEIDER:

26 On these privileged documents, Your
27 Honor, where the Special Master overruled
28 our privilege objections, we need to have
29 a hearing before Your Honor on those, each
30 of those documents as we did with
31 individual ones that already came up, and
32 then we need to have the opportunity to

17831

1 assert objections beyond privilege.

2 So it could take some period of
3 time. That's why we are stipulating with
4 the plaintiffs and agreeing to in effect
5 let them rest.

6 THE COURT:

7 So that can be put off. We don't
8 have to do that immediately.

9 Do you need those before the defense
10 case opens?

11 MR. RUSS HERMAN:

12 I need those before their witness
13 goes on for cross-examination purposes.

14 THE COURT:

15 Well, then we have got until Monday
16 at 1:00 to do that.

17 MR. RUSS HERMAN:

18 Yes, sir. We will be ready.

19 MR. LONG:

20 Your Honor, our first two witnesses
21 are medical monitoring witnesses. What
22 use could they possibly make of the
23 privileged documents with those two
24 people?

25 THE COURT:

26 Well, I don't know. I don't know
27 what Mr. Herman's case is about and I
28 don't know what these documents say. But
29 you all will have an hour or so to talk
30 about it.

31 MR. RUSS HERMAN:

32 I can tell you that every witness
17832

1 that takes that stand is going to be
2 cross-examined on company documents.

3 MR. LONG:

4 I can tell you you will hear
5 objections on that.

6 MR. RUSS HERMAN:

7 I'm certain I will, and the Judge
8 will have to rule, won't he?

9 MR. LONG:

10 Yes.

11 THE COURT:

12 We will recess until --

13 MR. REDFEARN:

14 Your Honor, one other point. It's an
15 easy one.

16 You had taken one document under
17 advisement. We were just checking for
18 completeness. It was Exhibit 2821.01.

19 It is in fact complete. And as long
20 as it was complete, there was no objection
21 to that. Mr. Copley?

22 MR. COPLEY:

23 Yes, it is complete, Your Honor.

24 MR. SCHNEIDER:

25 Your Honor --

26 THE COURT:

27 Just a moment. Let me make a note of
28 that, please.

29 When did I consider the arguments on
30 that document?

31 MR. REDFEARN:

32 It would have been last Friday or
17833

1 Thursday.

2 MS. WIMBERLY:

3 It was the 27th.

4 MR. REDFEARN:

5 The 27th, Your Honor.

6 THE COURT:

7 2821.01.

8 MR. REDFEARN:

9 Yes, Your Honor.

10 THE COURT:

11 And it is complete?

12 MR. REDFEARN:

13 Yes, Your Honor.

14 THE COURT:

15 Was it objected to?

16 MR. REDFEARN:
17 No, Your Honor. As long as it was
18 complete, there was no objection.
19 MR. COPLEY:
20 That's correct, Your Honor.
21 THE COURT:
22 With no objection, it will be
23 received.
24 All right. We will talk about
25 scheduling after the jury is discharged at
26 1:00.
27 MR. WITTMANN:
28 Just so I'm clear on this, my
29 understanding in view of the stipulation,
30 all that will happen when the jury comes
31 back is plaintiffs will announce they rest
32 their case, as Mr. Herman has stated?

17834

1 THE COURT:
2 Yes. And then I will discharge the
3 jury until 1:00 on Monday, April 7th.
4 That's my plan.

5 MR. WITTMANN:
6 Okay.
7 THE COURT:
8 And we will decide what we do between
9 now and then after that happens.

10 MR. SCHNEIDER:
11 Your Honor, one point with respect to
12 the stipulation.

13 THE COURT:
14 Mr. Herman, listen up, please.

15 MR. SCHNEIDER:
16 My understanding of the stipulation
17 is it's designed to assist the plaintiffs
18 to facilitate the process of them resting
19 the case today, so we can file our
20 directed verdict motions today, so they
21 can respond on the schedule Your Honor
22 stated, so that we can argue those
23 directed verdict motions on Monday, and
24 the Court can or cannot rule at that time,
25 if it wants to.

26 But that this process, the process of
27 ruling on these privileged documents, is
28 not designed to delay that or delay the
29 start of our case, and that it should not
30 be necessary for us to have to schedule
31 hearings between now and then on 75
32 documents.

17835

1 And that's my understanding of what
2 we are trying to do here.

3 THE COURT:
4 That's not my understanding,
5 Mr. Schneider. Mr. Herman has indicated
6 that he wants rulings on all these
7 documents before the first defense witness
8 stakes the stand.

9 Am I correct, Mr. Herman?

10 MR. RUSS HERMAN:

11 Absolutely.

12 THE COURT:

13 Then we have that scheduling problem
14 to deal with. And we will deal with that
15 at 1:00.

16 I would suggest to you that maybe if
17 both sides talk, some of those issues can
18 be simplified, some of the work
19 shortened.

20 But I don't have the ability to do
21 it. I'm here to do what the law requires
22 that I do to conduct this trial.

23 If you folks can agree on something
24 that reduces that, that's fine. Otherwise
25 I will do what I think I have to do.

26 MR. WITTMANN:

27 Thank you, Your Honor.

28 THE COURT:

29 We will resume at 1:00.

30 (Whereupon, the hearing adjourns at
31 11:55 a.m.)

32 17836

1 REPORTER'S CERTIFICATE

2
3 I, NICHOLAS A. MARRONE, CCR, Registered
4 Merit Reporter, do hereby certify that the foregoing
5 proceedings were reported by me in shorthand and
6 transcribed under my personal direction and
7 supervision, and is a true and correct transcript,
8 to the best of my ability and understanding.

9 That I am not of counsel, not related to
10 counsel or the parties hereto, and not in any way
11 interested in the outcome of this matter.

12
13
14 NICHOLAS A. MARRONE (CCR 21011)
15 CERTIFIED COURT REPORTER
16 REGISTERED MERIT REPORTER